

Application No. 10/536,462

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**REMARKS****OCT - 1 2010**

Favorable reconsideration and allowance of the subject application are respectfully requested. Claims 1-23, and 25-26 are pending in the present application, with claims 1, 13, and 14 being independent. Claim 26 has been added by this amendment, which does not add any new subject matter.

***Claim Rejections under 35 U.S.C. §103***

Claims 1-10 and 13 stand rejected under 35 U.S.C. §103, as being unpatentable over Jankowski et al (US 2003/0039874) in view of Tanaka (US 2002/0076586) and claim 12 is rejected under 35 U.S.C. §103, as being unpatentable over Jankowski et al (US 2003/0039874) in view of Tanaka (US 2002/0076586) and further in view of Uchida et al (US 6,057,051) while claims 14-18 are rejected under 35 U.S.C. §103, as being unpatentable over Jankowski et al (US 2003/0039874) in view of Tanaka (US 2002/0076586) and further in view of Keppeler (US 2002/0098399) and Sakai et al (JP 02-098067). Additionally claim 21 is rejected under 35 U.S.C. §103, as being unpatentable over Jankowski et al (US 2003/0039874) in view of Tanaka (US 2002/0076586) and further in view of Keppeler (US 2002/0098399) and Sakai et al (JP 02-098067) and Mukerjee et al (US 2002/0168560) while claim 22 is rejected under 35 U.S.C. §103, as being unpatentable over Jankowski et al (US 2003/0039874) in view of Tanaka (US 2002/0076586) and further in view of Keppeler (US 2002/0098399) and Sakai et al (JP 02-098067) and Uchida et al (US 6,057,051) and claims 23 and 25 are rejected under 35 U.S.C. §103, as being unpatentable over Jankowski et al (US 2003/0039874) in view of Tanaka (US 2002/0076586) and further in view of Keppeler

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(US 2002/0098399) and Anderten et al (US 4,164,172). These rejections are respectfully traversed in light of the presently pending claims..

The primary traversal of the rejection of independent claims 1, 13 and 14 is based on a lack of a basis for the obviousness of the combination of the references to Jankowski and Tanaka. This lack of a basis comes from the Examiner's own statements. That is, in the final rejection Of April 1, 2010, the statement of rejection includes an indication that Jankowski does not teach that the fuel cell is integrated in the material of the first electrode. For this feature, which is recited in each one of independent claims 1, 13 and 14, the secondary reference to Tanaka was cited for teaching "a fuel cell, usable in portable devices, with a fuel electrode assembly composed of a fuel electrode surrounded by a hydrogen absorber acting as a fuel source (Abstract, para. 53, 54, 55)".

Still further in order to emphasize this reasoning, the Examiner, in the Response to Arguments section at para.19 of the Final Rejection states that the arguments presented by Applicants in their January 4, 2010 Amendment were not persuasive because:

it appears that applicant has disregarded the discussion of the combination of these references as presented in the previous Office Action and reproduced here. As stated in the rejections above (see Paragraph 10), "...Tanaka teaches a fuel cell, usable in portable devices, with a fuel electrode assembly composed of a fuel electrode *surrounded by a hydrogen absorber acting as a fuel source* [emphasis original] (Abstract; para. 53, 54, 55)..."

From this reiterated statement and the Examiner's emphasized statement, the Examiner again concludes that "it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate a layer of material having fuel

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integrated therein onto an anode of the fuel cell of Jankowski".

However the premise emphasized by the Examiner and reiterated in the Final Rejection is false, as Tanaka does **not** disclose that the fuel electrode 12 of Tanaka is "*surrounded by a hydrogen absorber*" 11. That is, the hydrogen absorber 11 is surrounded by the fuel electrode 12 which is precisely the opposite of the stated language twice stated in the rejection as the basis for the obviousness of the rejection.

In response to this same argument presented in the Response After Final of July 30, 2010, the Advisory Action of August 13, 2010 does not dispute the failure of Tanaka to disclose that the fuel electrode 12 is "surrounded by a hydrogen absorber" 11 nor the fact that Tanaka teaches the precise opposite. The Advisory Action merely states that it would be obvious to combine references because of what the rest of Tanaka teaches one skilled in the art.

It is submitted that an obviousness rejection cannot endure when the basis for the combination has been undisputedly shown to be erroneous.

In addition, as stated in the Response to the Final Rejection, when looking at Tanaka, one skilled in the art finds a fuel cell which is not able to be integrated and has no teaching of any type of layer which has fuel "**integrated** into the material" of the electrode as required by claim 1 or a fuel delivery device as an **integral part of one of the electrodes** as required by claim 13. Thus with respect to claims 1 and 13 there is yet another reason why there exists no basis for the combination to provide the claimed invention.

Because all dependent claims contain at least the features of claim 1 or 14, they are also submitted as allowable over the art of record.

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Claims 12 and 23 are rejected under 35 USC, first paragraph. Concerning claim 12, the rejection states that there is no enabling disclosure concerning positioning a fuel cell sensor in the reservoir.

The substitute specification at page 22 in the Summary of the Invention provides at the first paragraph that "it is possible to use such fuel cell as energy reservoirs". The fuel is hydrogen so that according to the invention, in one embodiment, no other additional infeed devices for hydrogen or corresponding energy carries is provided.(page 25, third paragraph). Figure 1 discloses that the first electrode 3 includes within or next to it the H<sub>2</sub>(fuel) and Figure 2 shows the electrode 3 and the area containing Pd and H<sub>2</sub> along with the fuel sensor 18. Therefore there is a disclosure supporting the claim language "positioning a fuel sensor in the reservoir" .particularly when the reservoir is defined within claim 1 as "containing fuel and disposed with the first electrode.

With respect to claim 23, the rejection provides that there is no support for "measuring the resistance of the reservoir". Once again as in the Response to Final Rejection, applicants emphasize that paragraphs 27 and 28 support this limitation so that one skilled in the art could make and use the invention under the provisions of 35 USC 112, first paragraph.

With respect to the Double Patenting Rejection submitted as being overcome by the Terminal Disclaimer filed on July 30, 2010, applicants hope that, in addition to the two weeks between the submission of the Terminal disclaimer and the Advisory Action, the additional time since the August 13 Advisory Action has been sufficient for "review and approval" so that the double patenting rejections can be removed.

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Accordingly the removal of the rejections of claims 1-23 and 25 is respectfully requested.

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### CONCLUSION

Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Martin R. Geissler, Applicants' Attorney at 1.703.621.7140 so that such issues may be resolved as expeditiously as possible.

For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-3828 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Date: 10/01/2010

Respectfully Submitted,

  
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